

MARK JENDREK, P.C.

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March 15, 2004

865/824-1900

865/824-1910 FAX

ALSO ADMITTED IN MARYLAND

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REPLY TO

P.O. BOX 549

KNOXVILLE, TENNESSEE 37901

E-MAIL TO: mj@jendrekpc.com

Ms. Charla Dillon, Docket Clerk
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Via Fax 615/741-5015
and FedEx

Re: Petition to Intervene; Docket No. 04-00045

Dear Ms. Dillon:

Enclosed is an original and 13 copies of a Petition to Intervene filed by East Sevier County Utility District in the above-referenced case. Pursuant to our conversation earlier today, and my conversation with Randal Gilliam, the fax of this Petition to Intervene, having been received on March 15, 2004, constitutes compliance with the provisions of Mr. Collier's Notice of Hearing requiring any Petition to Intervene being filed no later than March 15, 2004.

Also enclosed is my firm's check in the amount of \$25.00 for the filing fee.

By copy of this letter and the enclosure, the Petition to Intervene is being served on Tennessee Wastewater Systems, Inc.

If you have any questions, please call.

Very truly yours,



Mark Jendrek

Enclosures

cc: Tennessee Wastewater Systems, Inc.
East Sevier County Utility District

**IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

PETITION OF TENNESSEE WASTEWATER
SYSTEMS, INC. TO AMEND ITS CERTIFICATE
OF CONVENIENCE AND NECESSITY

DOCKET NO. 04-00045

PETITION TO INTERVENE

East Sevier County Utility District (the "District"), by and through counsel, petitions the Tennessee Regulatory Authority ("TRA"), pursuant to Tennessee Code Annotated Sections 65-2-107 and 4-5-310 and Tennessee Rules and Regulations Chapters 1220-1-1 and 1220-1-2, to allow the District to intervene and be heard in opposition to Tennessee Wastewater Systems, Inc.'s ("Tennessee Wastewater") Petition To Amend Its Certificate of Convenience and Necessity to include:

All of Sevier County with the exception of (1) the area presently being served by East Sevier Utility District [sic], (2) the area presently within the city limits and urban growth boundaries of Sevierville, Gatlinburg, and Pittman Center, (3) the area presently within the city limits of Pigeon Forge, (4) Valley Mart Exxon, 3201 Wears Valley Road, Sevierville, Tennessee, and (5) Cove Mountain Realty, 3174 Wears Valley Road, Sevierville, Tennessee.

1. The District is a utility district operating in Sevier and Cocke Counties, Tennessee, providing water service as well as wastewater treatment service to its customers.
2. The District has extended the provision of its services beyond its territorial limits, as it is authorized to do pursuant to the provisions of Tennessee Code Annotated Sections 7-51-401 and 7-82-302.

3. As East Sevier County Utility District receives requests to do so, East Sevier County Utility District intends to continue the provision of services outside of its territorial boundaries.

4. Because the petition of Tennessee Wastewater seeks to include:

All of Sevier County with the exception of (1) the area presently being served by East Sevier Utility District [sic], (2) the area presently within the city limits and urban growth boundaries of Sevierville, Gatlinburg, and Pittman Center, (3) the area presently within the city limits of Pigeon Forge, (4) Valley Mart Exxon, 3201 Wears Valley Road, Sevierville, Tennessee, and (5) Cove Mountain Realty, 3174 Wears Valley Road, Sevierville, Tennessee.

this broad, undefined grant of territorial authority would have a deleterious effect on the District, particularly in the event one of the District's customers requested wastewater treatment services from the District in an area within that covered by Tennessee Wastewater's Certificate of Convenience and Necessity.

5. The inconsistencies in Tennessee Wastewater's pleadings need clarification with respect to the area contemplated by Tennessee Wastewater's petition. In a letter dated May 16, 2003, signed by Charles Pickney, Jr. appearing in Docket No. 03-000329, Mr. Pickney specifically stated that "East Sevier County Utility District serves a portion of the east side of the county and we have excluded their chartered territory." The language in the amended petition contemplates "the area presently being served by East Sevier Utility District [sic]," which is not the same as the District's chartered territory. Without some further clarification or specificity, it is impossible to know the area contemplated by Tennessee Wastewater's proposed Certificate of Convenience and Necessity, particularly with respect to the District, but also with respect to others as there have been encroachments on the District's chartered territory by other service providers.

6. Representatives of Tennessee Wastewater have made assertions to both customers and prospective customers of the District as well as to the District's engineers that no entity other than Tennessee Wastewater will be allowed or authorized to provide wastewater treatment services to any customers in Sevier County without the express written consent of Tennessee Wastewater, and have further indicated that the receipt of such consent will require a payment of money to Tennessee Wastewater.


7. To the extent the legal consequences embodied in those representations are accurate, and no concession is made that they are, the effect is to give Tennessee Wastewater an exclusive right to provide wastewater services in all of Sevier County, other than the excluded territories which, as set forth above, have not been sufficiently delineated. This has a chilling effect on competition, and is not conducive to the provision of the most efficient wastewater treatment services at the most efficient rates for the rate payers.

8. There are additional inaccuracies in both the original petition and the amended petition. For whatever reason, projects for which Tennessee Wastewater is providing no services, and none are contemplated in the near future, are listed on the exhibits to the petition entitled "Residential Sewer Rates." For example, there is no agreement between Tennessee Wastewater (or its predecessor, On-Site Systems, Inc.) to provide services for the Homestead Subdivision. The project shown on the Residential Sewer Rate sheet as "Dollywood Project (Dream Catcher Ridge)" was originally an option that has expired with no action on the part of developer. Indeed for neither of these projects, was there ever a specific request for services or an agreement between the developer and/or the property owner and Tennessee Wastewater to provide services.

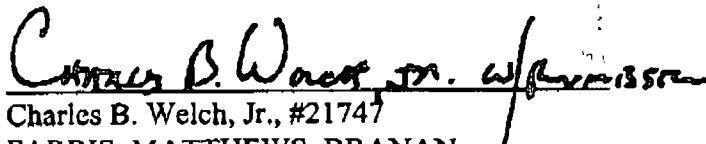
9. Finally, shown on the Residential Sewer Rate sheet is a project called Smokey [sic] Mountain Ridge Resort. This project was the object of a petition by On-Site Systems, Inc. (Docket No. 03-00069) which petition was opposed by the owner and developer of Smoky Mountain Ridge Resort, and which resulted in a withdrawal of the petition by On-Site Systems, Inc. when the developer intervened. Please see proceedings under Docket No. 03-00069. These misrepresentations are misleading to this Authority, particularly when construed with the rationale set forth in Mr. Pickney's May 16, 2003, correspondence in which Mr. Pickney claims to have submitted 12 petitions in the last three years for amendments to its Certificate of Convenience and Necessity. The District suggests that several of those are disingenuous, and do not accurately reflect requests for service. To the extent this is typical of the accuracy of the remaining representations in the petition and the background documentation for the petition, further investigation would be appropriate as to the "public necessity" for this petition, much less the effect of granting this petition with less than clear and concise territorial limitations.

WHEREFORE, East Sevier County Utility District prays the TRA grant its Petition to Intervene, and that the District be made a party to this cause and be heard at the hearing set for Monday, March 22, at 1:00 p.m..

Respectfully submitted this 15th day of March, 2004.



Mark Jendrek, #12993
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P.O. Box 549
Knoxville, Tennessee 37901
865/824-1900



Charles B. Welch, Jr., #21747

FARRIS, MATTHEWS, BRANAN,

BOBANGO & HELLEN, PLLC

618 Church Street, Suite 300

Nashville, Tennessee 37219

615/726-1200

Attorneys for East Sevier County Utility District

CERTIFICATE OF SERVICE


The undersigned hereby certifies that the foregoing document has been served upon the following persons by hand delivery or by United States Mail, with proper postage thereon.

Tennessee Wastewater Systems, Inc.

7638 River Road Pike

Nashville, Tennessee 37209

This 15th day of March, 2004.



Mark Jendrek

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E-MAIL TO mj@jendrekpc.com

TELECOPY COVER SHEET

TO: Charla Dillon
Tennessee Regulatory Authority DATE: March 15, 2004

FAX #: 615/741-5015 PHONE #: 615/741-2904 x136

FROM: Mark Jendrek Number of pages, including cover sheet: 7

Should you experience difficulties receiving this transmission, please call (865) 824-1900.

COMMENTS

Ms. Dillon: Attached for filing in Case No. 04-00045 is the Petition to Intervene filed by East Sevier County Utility District. An original, together with 13 copies as well as a check in the amount of \$25.00 will follow via FedEx.

If you have any questions about or troubles with this transmission, please call.

Thanks for your help.

Mark Jendrek

This transmission contains privileged and confidential information intended only for the use of the individual or entity named above. If you have received this transmission in error, please immediately notify us by telephone and return the original transmission to us at the above address via U.S. Postal Service. Thank you.